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Tennessee Says 'No' to Vaccinating Children Without Parental Consent

During Tennessee's COVID-19 vaccination campaign, the state's Department of Health invoked the "'mature minor' doctrine" to allow minors 14 and older to be vaccinated without a parent's consent, but lawmakers on Thursday passed a law requiring healthcare providers to obtain consent from a parent or legal guardian before vaccinating a minor.

By Brenda Baletti, Ph.D.

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The Tennessee Legislature on Thursday passed a law that prevents healthcare providers in the state from vaccinating minors without parental consent. The bill is now awaiting Gov. Bill Lee's signature.

The "Mature Minor Doctrine Clarification Act," passed in the Senate last week and in the House Thursday, requires healthcare providers to obtain informed consent from a parent or legal guardian before vaccinating a minor.

During its COVID-19 vaccination campaign in 2021, the Tennessee Department of Health (DOH) invoked the "'mature minor' doctrine" — which says children of different ages have different maturities and capacities to consent to medical treatment.

The DOH used this doctrine to justify allowing minors ages 14 and older to consent to vaccination without informing their parents, as long as the child is deemed "mature" by their physician.

But Rolf Hazlehurst, senior staff attorney for Children's Health Defense (CHD), said the DOH's vaccination policy was based on a "dangerous oversimplification" of the mature minor doctrine.

Many Tennessee lawmakers agreed. During an April 10 subcommittee meeting, bill sponsor Rep. John Ragan (R-Oak Ridge) said the new law, then a bill, clarified the mature minor doctrine, which he said, "has been misinterpreted and shall we say, abused somewhat."

Ragan added that by passing this law, legislators would be "giving parents back their rights to make medical decisions for their children."

Hazelhurst told The Defender the law is "extremely important because it closes a legal loophole, which endangered parents, children and healthcare providers."

In a Feb. 21 hearing of the Tennessee House Health Subcommittee, Hazelhurst testified that the law's importance goes beyond Tennessee, because "nationwide, people are still relying upon Tennessee's misinterpretation of the mature minor doctrine" to vaccinate children without

parental consent.

Hazlehurst was the senior attorney in a lawsuit brought by CHD against the District of Columbia, seeking an injunction to block enforcement of a law passed in 2020 allowing children 11 and older to consent to vaccination.

In that case, Hazlehurst said, the district based the arguments in its briefs in part on the Tennessee DOH's interpretation of the mature minor doctrine as legal precedent for its law.

The federal judge in the district case sided with the plaintiffs and issued an injunction against the law in March 2022.

The "mature minor" doctrine

The "mature minor" doctrine invoked by DOH is based on a 1987 Tennessee Supreme Court case, Cardwell v. Bechtol, where the court ruled in favor of a doctor accused of medical malpractice for treating a 17-year-old girl for a herniated disk.

In that case, the court said the common law "Rule of Sevens" established that children have different capacities to consent to different medical treatments as they grow up, differentiating among children under the age of 7, ages 7 to 14 and over 14.

The Tennessee DOH summarized the "mature minor" doctrine in a memo on its website, interpreting it to mean that children under age 7 cannot consent to treatment. For children between the ages of 7 and 14, "a physician generally should get parental consent before treating."

And for children ages 14 to 17, "The physician may treat without parental consent unless the physician believes that the minor is not sufficiently mature to make his or her own health care decisions," it says.

In all cases, there are certain statutory exemptions where physicians can treat children without parental consent, including in situations involving emergencies, drug abuse, and contraception and prenatal care.

Based on this summary of the doctrine, the DOH concluded that county health departments follow Tennessee law and "provide medical treatment and vaccinations to patients as young as 14 without parental consent if the individual provider determines that the patient meets the definition of a 'mature minor.'"

But the DOH's summary of the doctrine "omit[s] critical elements of the mature minor doctrine," CHD argued in a letter sent in August 2021 to Ragan and Sen. Kerry Roberts.

The Cardwell v. Becthol ruling explicitly stated that the "adoption of the mature minor exception to the common law rule [used in the ruling] is by no means a general license to treat minors without parental consent."

Rather, the application of the mature minor doctrine is dependent "on the facts of each case," to be determined by a jury. In other words, the DOH was taking a jury instruction in a medical malpractice case and stating it was a statewide standard for vaccination, contrary to the spirit of the ruling, the CHD letter said.

"We do not, however, alter the general rule requiring parental consent for the medical treatment of minors," the Tennessee Supreme Court ruling states.

History of the controversy

The Tennessee DOH fired Dr. Michelle Fiscus, medical director of Tennessee's Vaccine-Preventable Diseases and Immunization Program, in the summer of 2021, in part in response to an email she sent on May 12, 2021.

Fiscus sent the email to COVID-19 vaccine providers across Tennessee informing them that according to Tennessee's "mature minor" doctrine, they could provide vaccinations to minors as young as 14 without parental consent if they deemed that patient to be a "mature minor."

The email stated: "There is no federal, legal requirement for parent or caregiver consent for COVID-19, or any other, vaccine."

Fiscus sent the email the same day the Centers for Disease Control and Prevention's (CDC) Advisory Committee on Immunization Practices voted to recommend the use of Pfizer's COVID-19 vaccines for children ages 12 and up, a decision she references in the email.

A few weeks after the letter went out, in the Tennessee General Assembly's Joint Government Operations Committee meeting on June 16, 2021, Dr. Lisa Piercey, health commissioner and Fiscus' boss, came under fire by Republican legislators for the email and the DOH's targeting of children more generally.

Piercey confirmed in her testimony that based on the "mature minor" doctrine, the state of Tennessee treated 14-year-old children as capable of making decisions themselves as to whether to get the COVID-19 vaccine that was under Emergency Use Authorization.

Sen. Mark Pody responded, "I don't know the terms that I could use to express my extreme disappointment, that in the state of Tennessee, where the majority of adults said no, to think that a 14-year-old child could say yes."

At that time, only 37-39% of Tennessee residents were vaccinated, according to Piercey.

At the June 16, 2021, meeting, Rolf testified that the memo was clearly written by a lawyer — which Fiscus later confirmed in defending the email — in order to set a statewide locality rule that children 14 and up could be vaccinated without their parents' consent.

"If a parent brings a lawsuit based on lack of consent, I have no doubt whatsoever that that letter will be attached as an exhibit in the motion to dismiss and the motion for summary judgment,"

he said, adding, "I can't stress enough that this letter has tremendous legal effect."

The DOH fired Fiscus on July 12, 2021.

The Mature Minor Doctrine Clarification Act, which clarifies the rules about minor consent with respect to vaccination, was filed in the Tennessee General Assembly on Jan. 31.

'Minor consent' laws failing across the country

In March 2022, the U.S. District Court for the District of Columbia issued a preliminary injunction prohibiting the mayor of the District of Columbia, the D.C. Department of Health and D.C. public schools from enforcing the D.C. Minor Consent for Vaccinations Amendment Act of 2020 (D.C. Minor Consent Act), The Defender reported.

That law allowed a minor, 11 or older, to receive a vaccine, "if the minor is capable of meeting the informed consent standard" and the vaccine is recommended by the CDC's Advisory Committee on Immunization Practices and provided according to the childhood immunization schedule.

The injunction stemmed from two lawsuits filed against the D.C. Minor Consent Act.

CHD and the Parental Rights Foundation filed one lawsuit, and the Informed Consent Action Network filed the other.

During oral arguments in the case, Hazlehurst argued the D.C. Minor Consent Act violates the Supremacy Clause of the U.S. Constitution because it contains multiple provisions that strip away the meager protections guaranteed to parents under the National Childhood Vaccine Injury Act of 1986.

The preliminary injunction, which the defendants did not appeal within the required 30-day period and therefore remains in place, reverted the district to the standard age of consent of 18, at least until the conclusion of the case.

SUGGEST A CORRECTION

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Brenda Baletti Ph.D. is a reporter for The Defender. She wrote and taught about capitalism and politics for 10 years in the writing program at Duke University. She holds a Ph.D. in human geography from the University of North Carolina at Chapel Hill and a master's from the University of Texas at Austin.

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